IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

S.B.

Plaintiff,

vs. **Cause No. 13-CV-1120**

THE STATE OF NEW MEXICO,
NEW MEXICO DEPARTMENT OF PUBLIC SAFETY,
Dr. John Doe, and TIMOTHY CARLSON

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441(b) and 1446(a) and (b), Defendants State of New Mexico and New Mexico Department of Public Safety, by and through their undersigned counsel Brennan & Sullivan, P.A. (Christina L. G. Brennan), give Notice of Removal to this Court of the civil action filed in the First Judicial District Court for the State of New Mexico, County of Santa Fe, Cause No. D-101-CV-2013-02568, filed by S.B., Plaintiff, and as grounds therefore state:

1. On September 30, 2013, Plaintiff filed a Complaint with the First Judicial District Court. A copy of the Complaint is attached hereto as **Exhibit A**.

2. Summonses were issued on October 1, 2013. These are attached hereto as **Exhibit B**.

3. Plaintiff filed a First Amended Complaint to Recover Damages for Deprivation of Civil Rights, Violation of Title II of the Americans with Disabilities Act, and Negligent Hiring. A copy of this First Amended Complaint is attached hereto as **Exhibit C.**

4. An Amended Summons was issued on October 17, 2013. A copy of this Amended Summons is attached hereto as **Exhibit D.**

5. The Amended Summons was served on October 22, 2013. *See* **Ex. E.**

6. This Notice of Removal is timely as it is filed within thirty (30) days of proper service of the Complaint on October 22, 2013.

7. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the First Judicial District Court, County of Santa Fe, State of New Mexico.

8. The claims stated against Defendants that are subject to the original jurisdiction of this Court pursuant to 28 U.S.C. 1331 and 1343(a)(3) and (4) are as follows:

   a. The First Amended Complaint alleges Deprivation of Civil Rights and Title II of the Americans with Disabilities Act in the title of the pleading. *See* Ex. C, title.

   b. Plaintiff alleges that she has brought the Complaint under 42 U.S.C. § 1983, 42 U.S.C. § 1331, and 28 U.S.C. § 1391(b). *See* Ex. C, "Jurisdiction and Venue."

c. Count I of Plaintiff's Complaint alleges violations of the Fourth Amendment of the United States Constitution (unlawful search and seizure). *See* Ex. C, ¶ 58.

d. Count II of Plaintiff's Complaint alleges violations of the Fourteenth Amendment of the United States Constitution (substantive due process and equal protection). Plaintiff states that Count II is explicitly brought against Defendant Carlson under 42 U.S.C. § 1983. *See* Ex. C,¶ 66.

e. Count III of Plaintiff's Complaint alleges violations of Title II of the Americans with Disabilities Act. *See* Ex. C., ¶¶ 71-91.

9. Federal questions thus appear on the face of Plaintiff's Complaint. Plaintiff has alleged state tort claims. This Court has supplemental jurisdiction over these state claims pursuant to 28 U.S.C. § 1367.

10. To date, named defendant Timothy Carlson has not been served. Review of the First Judicial District online docket shows no return of service for Mr. Carlson. Attempts to contact Mr. Carlson have been unsuccessful. Removal of this matter is nevertheless appropriate as all properly served parties consent to removal pursuant to 28 U.S.C. § 1446(b)(2)(A) and 28 U.S.C. § 1441(a).

11. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendants will file a Notice of Filing of State Court Record and copies of the pleadings filed in the First Judicial District for the State of New Mexico, County of

Santa Fe, Cause No. D-1329-CV-2013-01032, within twenty-eight (28) days of filing this Notice of Removal. A Civil Cover Sheet is attached as **Exhibit F**.

Respectfully submitted,

BRENNAN & SULLIVAN, P.A.

By: *__/s/ Christina L. G. Brennan__*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 20th day of November, 2013, a true and accurate copy of the foregoing was mailed by first class mail, postage pre-paid, to:

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Ms. Shannon Kennedy, Esq.
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By: *__/s/ Christina L. G. Brennan__*
Christina L. G. Brennan